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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Falkland Islands (Malvinas)

Working paper prepared by the Secretariat

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I. General

1. The Falkland Islands (Malvinas)[1] is a Non-Self-Governing Territory administered by the United Kingdom of Great Britain and Northern Ireland. The Territory comprises two large islands, known as East and West Falkland, as well as some 200 smaller islands, and has a total area of about 12,173 km^2 (4,700 square miles). The Territory is situated in the South Atlantic, about 770 kilometres north-east of Cape Horn and about 480 km east of the South American mainland. South Georgia, located about 1,300 km south-east of the Falkland Islands (Malvinas) group, and the South Sandwich Islands, located about 750 km east-south-east of South Georgia, are considered a separate Territory and are administered from the Falkland Islands (Malvinas); the Governor of the Falkland Islands (Malvinas) acts concurrently as Commissioner for South Georgia and the South Sandwich Islands. According to the 2001 census, the population of the Territory is 2,391 (not including an estimated 112 residents temporarily absent and 534 civilians working in conjunction with the Ministry of Defence), up from 2,221 in 1996. A new census will be taken in October 2006.

II. Constitutional and political developments

2. Detailed information on the Constitution and Government of the Falkland Islands (Malvinas) is contained in the 2001 working paper prepared by the Secretariat (A/AC.109/2001/11).

3. On 17 November 2005, general elections were held for all eight members of the Legislative Council, five from the Stanley constituency and three from the Camp (i.e. outside Stanley), for a four-year term. A review of the Constitution is ongoing. A new Governor, Alan Huckle, is due to replace Howard Pearce in the summer of 2006.

4. On 10 June 2005, the Government of Argentina issued the following press communiqué:

> "On 10 June, the 'Day of Affirmation of Argentine Rights over the Malvinas Islands and the Antarctic Sector', the Argentine nation commemorates the creation in 1829 of the Political and Military Command for the Malvinas Islands and islands adjacent to Cape Horn in the Atlantic Ocean, through a decree issued by Brigadier Martín Rodríguez, acting Governor of Buenos Aires province.
>
> "Since its inception as an independent nation, the Argentine Republic has demonstrated, through various acts of Government, its firm political will to exercise effective sovereignty over the southern territories and maritime areas that it inherited from Spain.
>
> "Through this act the Government of Argentina reaffirmed its legitimate titles over the Islands and sought to ensure respect of the laws so as to protect without any discrimination the activities of the Argentine and non-Argentine population that resided on the Islands. Thus, the institutional framework was established for the subsequent undertakings of the Governor of the Malvinas Islands, D. Luis Vernet.

"This effective exercise of sovereignty was interrupted on 3 January 1833, when British forces occupied the Malvinas Islands, expelling the Argentine population and authorities settled there and replacing them with others of British origin.

"The people and Government of Argentina never consented to that act of force and today, as in the past, they confirm their permanent and unwavering determination to regain the exercise of sovereignty over the Malvinas Islands, South Georgia and South Sandwich Islands and the surrounding maritime areas, through the peaceful path of diplomatic negotiations and in accordance with the many appeals of the international community.

"Argentina's claim has traditionally been supported by the countries of our region and by major international and regional organizations, including the General Assembly of the United Nations and the General Assembly of the Organization of American States. These forums have repeatedly called on the Governments of the Argentine Republic and the United Kingdom to resume negotiations with a view to resolving the sovereignty dispute in a peaceful and conclusive manner.

"On this important date, the Argentine Government reiterates its unwavering sovereignty claim over the Malvinas Islands, South Georgia and South Sandwich Islands and the surrounding maritime areas. At the same time, it reaffirms its permanent willingness to resume negotiations with a view to settling as soon as possible and in a just and conclusive manner the still unresolved sovereignty dispute."

5. The position of the United Kingdom is that it has no doubts about its sovereignty over the Falkland Islands (Malvinas), South Georgia and the South Sandwich Islands and their surrounding maritime areas. There can be no negotiations on the sovereignty of the Falkland Islands (Malvinas) unless and until such time as the Falkland Islanders so wish.

6. In a letter dated 10 May 2005 from the Permanent Representative of Argentina to the United Nations addressed to the Secretary-General (A/60/76), the Permanent Representative requested the circulation of three notes as documents of the General Assembly concerning item 23 of the agenda of the sixtieth session of the Assembly (Question of the Falkland Islands (Malvinas)): the note of 20 April 2005 from the Embassy of Argentina to the European Union in Brussels addressed to the Permanent Mission of Luxembourg in its capacity as President of the Council of the European Union (annex I); the note of the same date addressed to the President of the European Commission (annex II); and the note of the Ministry for Foreign Affairs, International Trade and Worship of 6 May 2005 addressed to the Embassy of the United Kingdom of Great Britain and Northern Ireland in Buenos Aires (annex III). In those notes, the Government of Argentina protested the inclusion of the Falkland Islands (Malvinas), South Georgia and the South Sandwich Islands and the "British Antarctic Territory" in part III, title IV, annex II, of the Treaty establishing a Constitution for Europe, signed on 29 October 2004. They further noted that the inclusion of those territories in the Treaty in no way affected the sovereignty and jurisdiction of the Argentine Republic over those territories.

7. In a letter dated 7 June 2005 from the Permanent Representative of the United Kingdom to the United Nations (A/59/843), the Permanent Representative requested

the circulation to the General Assembly of a letter presented to the Argentine Ministry for Foreign Affairs. In that letter, the Government of the United Kingdom rejected the protest of the Government of Argentina, noting that the inclusion of the Falkland Islands (Malvinas), South Georgia and the South Sandwich Islands and the British Antarctic Territory in the Treaty establishing a Constitution for Europe "simply confirms the present position with regard to the status of these British Overseas Territories". The note further stated that the United Kingdom "has no doubts about its sovereignty over the Falkland Islands, South Georgia and the South Sandwich Islands, the British Antarctic Territory and their surrounding or adjacent maritime areas".

8. In his annual Christmas radio message to the Islanders, Prime Minister Tony Blair reiterated the British Government's support for the Islanders' right to self-determination and its "continued commitment to upholding the Islands' security and the United Kingdom's sovereignty over the Falkland Islands".[2] He stated that the United Kingdom would continue to work for productive dialogue with Argentina on issues of mutual interest not least "in order to enhance future security and prosperity" for the Falkland Islands (Malvinas).[3]

9. In a letter dated 3 January 2006 from the Permanent Representative of Argentina to the United Nations addressed to the Secretary-General (A/60/647), the Permanent Representative transmitted the text of a statement issued on that date by the Government of Argentina "on the occasion of another anniversary of the illegitimate British occupation of the Malvinas Islands".

10. In a letter dated 31 March 2006 from the Permanent Representative of the United Kingdom to the United Nations addressed to the Secretary-General (A/60/743), the Permanent Representative transmitted the text of a statement issued on that date by the Government of the United Kingdom rejecting the "claim by the Government of Argentina to sovereignty over those islands and areas and that the Falkland Islands are under illegal occupation by the United Kingdom".

III. Mine clearance

11. On 11 October 2001, the Governments of the Argentine Republic and the United Kingdom concluded an agreement, covered by the formula on sovereignty, for carrying out a feasibility study on the clearance of landmines in the Falkland Islands (Malvinas), to fulfil the obligations undertaken by both countries in the Ottawa Convention of 1997. The Joint Argentine-British Working Party, established by the agreement, held its third meeting in Buenos Aires on 27 and 28 April 2005, its fourth meeting in London on 7 and 8 July 2005, its fifth meeting in Buenos Aires from 4 to 6 October 2005, its sixth meeting in London from 21 to 23 November 2005 and its seventh meeting in Buenos Aires from 27 to 29 March 2006. The Joint Working Party continued its consideration of the overall aims of the feasibility study, its technical and financial aspects, as well as management issues.

12. In February 2005, it was reported that a fact-finding team composed of representatives of the United Kingdom Ministry of Defence and the Department for International Development and Landmine Action, a not-for-profit company, had visited the Falkland Islands (Malvinas). Landmine Action has indicated that 16,600 mines remain in the Islands, distributed in 101 minefields. The team will submit a report to the United Kingdom Government on its findings.[4] Under the 1997 Ottawa

Convention, the United Kingdom Government is obliged to clear the Falkland Islands (Malvinas) mines by March 2009.

IV. Economic conditions

A. General

13. According to the administering Power, the pace of economic development has accelerated dramatically since 1982. This rapid growth resulted initially from the influx of British Government aid and, subsequently, from the development of fisheries. The size of the fisheries revenues and their subsequent investment have enabled improvements to be made in the infrastructure and the promotion of tourism and other enterprises which will help to diversify the economy.[5] In addition, since its formation in 1984, the Falkland Islands Development Corporation has been encouraging the development of a private sector.

B. Public finance

14. The Territory's financial year runs from 1 July to 30 June. According to the administering Power, for the 2004/05 period, the revised estimate for total revenue was 44.3 million British pounds (£), of which £13.7 million came from fisheries. Other sources of revenue include investment income (£9.4 million) and taxation (£7.9 million). During the same period, the original estimate for total expenditure was £41 million.

C. Agriculture, land tenure and livestock

15. Detailed information on agriculture, land tenure and livestock is contained in the 2001 working paper prepared by the Secretariat (A/AC.109/2001/11). According to the administering Power, the Falkland Islands Meat Company processed 21,466 sheep in 2004 and 23,200 sheep in 2005 and is aiming to be a strong distributor of premium organic lamb by 2010.

D. Fisheries

16. Loligo and Illex squid are the mainstay of the territorial fisheries and economy. In addition to the two squid species, a number of finfish are targeted, including southern blue whiting, hake and hoki. The Fisheries Department is responsible for administering the fishery. The 2005 Loligo squid catch of 58,700 tons was described as a "reasonable year" by Falkland Islands Fisheries Department Director, John Barton, with the average falling at 42,000 tons, and the highest since 2000, when 64,930 tons were caught.[6]

17. According to the administering Power, a major review of fisheries policy began in 2002 and culminated in the enactment of the Fisheries (Conservation and Management) Ordinance 2005.[7] The Legislative Council passed the Fisheries Bill on 26 August 2005. It is expected to be implemented on 1 July 2006. This bill added property rights to fisheries and "updated the law to reflect developments that will

stimulate the modernization of the fishing industry and the promotion of economic growth".[8] Also according to the administering Power, the most significant outcomes were the introduction of property rights in the fisheries and the enhancement of existing conservation measures. The current system of allocation of non-transferable, variable duration licences to individual vessels is to be replaced by a system of long-term individual transferable rights owned by Falkland Islanders.

18. According to the administering Power, the Ordinance made provision for international cooperation in relation to information exchange and combating illegal, unregulated and unreported fishing activities. It formalized existing procedures whereby any fishing vessel official "blacklisted" by the Commission for the Conservation of Antarctic Marine Living Resources or other regional fisheries management organization would not be authorized to fish in Falkland Islands (Malvinas) waters. Information, including evidentiary material, could be exchanged with other countries in support of the objectives of the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (November 1993) and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (December 1995).

19. Subsequent to the adoption of the Ordinance in October, the Argentine Government submitted a protest letter to the Government of the United Kingdom, regarding the illegitimate and unilateral adoption of the new fisheries policy in the waters surrounding the Falkland Islands (Malvinas) in violation of United Nations resolutions (see A/60/527). The letter, inter alia, states that this unilateral action by the United Kingdom was not compatible with the provisions of resolution 31/49, which calls upon the two parties to refrain from taking decisions that would imply introducing unilateral modifications in the situation while the islands are going through the process recommended by the General Assembly in its relevant resolutions.

20. In a letter to the Argentine Ministry of Foreign Affairs, the United Kingdom firmly rejected the "Argentine protest concerning the Falkland Islands' fisheries legislation and reiterated that the Falkland Islands Government was entitled to adopt whatever measures it considered necessary to conserve, manage and exploit fish stocks within its waters". Moreover, it expressed its disappointment that this matter was "affecting the level of Argentine cooperation on the conservation of fisheries resources under the South Atlantic Fisheries Commission, which [was] in the mutual interests of all parties".

21. In this connection, it is recalled that, by a Joint Statement of 28 November 1990, Argentina and the United Kingdom established the South Atlantic Fisheries Commission, which has met regularly and worked since then for the conservation of fisheries resources in that area.

22. In July 2005, the 27th meeting of the South Atlantic Fisheries Commission was held in London. The British delegation was led by Tony Crombie, the head of the Overseas Territories Department of the Foreign and Commonwealth Office. The Argentine delegation was led by Ambassador Eduardo Airaldi, head of the Malvinas and South Atlantic Department of the Ministry of Foreign Affairs. In a joint press statement, both delegations agreed that the formula on sovereignty over the Falkland Islands (Malvinas), South Georgia and the South Sandwich Islands and the

surrounding maritime areas, contained in paragraph 2 of the joint declaration issued in Madrid on 19 October 1989, applied to the meeting and its results.

23. Both delegations reaffirmed the importance they attached to ensuring the sustainability of fish stocks and reiterated the commitment of both Governments to the conservation of the fish and squid stocks of the south-west Atlantic. They recommended to both Governments the continuation of further scientific research in order to achieve greater understanding of the most significant offshore species in the area.

24. With respect to Illex squid, both delegations reaffirmed their support to the early warning system. The Commission agreed that, in the light of the 2005 season, the very precautionary approach it had previously agreed upon should be continued. The Commission therefore agreed to recommend to both Governments that every effort be made to maintain sufficient levels of Illex spawning stock during future seasons in order to maintain stock sustainability. They further agreed that there was an urgent need for scientific research aimed at establishing the appropriate levels of spawning stock biomass.

25. Recalling the Commission's concerns about the importance of achieving sustainability in the southern blue whiting fishery, the Commission noted that current analysis indicated that the decline in stock size had been arrested. However, those results were subject to a considerable level of uncertainty. Given the need to maintain a precautionary approach to that important fishery, the Commission agreed that further scientific investigation was required to clarify uncertainty in the status of that stock.

26. The Commission agreed to recommend that an ad hoc scientific meeting should be held in the near future to discuss the objectives and design of the future southern blue whiting survey.

27. The Argentine delegation reiterated its rejection of the announced British measures on fisheries matters. In response, the United Kingdom delegation rejected the Argentine position.

28. The Argentine delegation reiterated its concern about the situation created by the British decision with respect to the area described in the annex to the Joint Statement of 28 November 1990 and to the area west of it. It expressed the hope of the Argentine Government that the matter be resolved. The British delegation reiterated its position.

29. On 6 December 2005, the 28th meeting of the South Atlantic Fisheries Commission was held in Buenos Aires. According to the Argentine Ministry of Foreign Affairs, "there was no agreement with the British delegation on adopting the agenda proposed by Argentina with the purpose of analysing the South Atlantic Fisheries Commission mandate and how it has been affected by a prolonged list of unilateral British decisions". Argentina argued that the fisheries' legislation constituted "an illicit and unilateral long-term disposal of fishing resources that are subject to a sovereignty dispute and would have a severe negative impact on cooperation within the South Atlantic Fisheries Commission. Argentina further noted that those unilateral measures were incompatible with the bilateral understandings on cooperation for the conservation of fish stocks and did not correspond with the spirit of cooperation which prevailed within the South Atlantic

Fisheries Commission and undermined the mutual trust required in matters of cooperation in conservation of fish stocks."[9]

30. According to the administering Power, a United Kingdom delegation attended the 28th meeting of the South Atlantic Fisheries Commission, where the Argentine Government proposed an agenda that, in the view of the United Kingdom Government, exceeded the mandate of the Commission. The United Kingdom delegation indicated that it was prepared to discuss the wider mandate of the Commission at a separate meeting.

31. The Government of the United Kingdom maintains that recent changes in the fisheries licensing regime in the Falkland Islands were made for important conservation reasons. That was an internal matter for the Falkland Islands (Malvinas). The South Atlantic Fisheries Commission mandate has no competence over the internal licensing regime of the Falkland Islands.

E. Tourism

32. There has been significant expansion of the Falkland Islands (Malvinas) tourist industry in recent years. The United Kingdom is currently the principal market, but the Falkland Islands Tourist Board, a department of the Falkland Islands Development Corporation, has focused efforts on developing new contacts with tour operators in the United States and Europe. According to the administering Power, the Falkland Islands (Malvinas) aim to increase the number of visitors arriving via South America, using the weekly LanChile service from Chile. It was reported that more than 1,200 visitors from overseas had travelled around the Islands on land tours in 2004. Those figures were boosted by cruise ship visits of nearly 50,000 passengers and crew.

33. In October 2005, the Falkland Islands Development Board agreed to allocate £40,000 to the Tourist Accommodation Improvement Scheme, a programme designed to encourage tourism operators to improve accommodation to internationally accepted standards.[10]

F. Transport, communications and other basic facilities

34. Detailed information on transport, communications and other basic facilities is contained in the 2001 working paper prepared by the Secretariat (A/AC.109/2001/11).

35. During the period under review, LanChile continued to provide regular round-trip service from Punta Arenas, Chile, to the Falkland Islands (Malvinas), including two monthly stopovers in Rio Gallegos, Argentina, one in each direction, in accordance with the provisions of the Joint Statement of 14 July 1999 between Argentina and the United Kingdom. That service is carried out in the framework of commercial air agreements between Argentina and Chile. The Exchange of Notes Agreement of 23 February 2001 between Argentina and the United Kingdom placed private navigation and private aerial navigation between Argentina and the Falkland Islands (Malvinas) under a formula of sovereignty. Thus, Argentina considers and authorizes non-regular flights to the Falklands (Malvinas) on a case-by-case basis.

36. As from 3 November 2003, Argentina does not authorize non-regular flights between third countries and the Falkland Islands (Malvinas) by any company flying under a third country flag. That position does not affect the continuation of the above-mentioned regular service and does not apply to emergency situations or health evacuation flights.

37. In late 2003 and the first quarter of 2004, Argentina and the United Kingdom exchanged views on the Argentine proposal aimed at the establishment of direct regular air service between Argentina and the Falkland Islands (Malvinas). The United Kingdom stated that any arrangements would need to be acceptable to the Islanders. No agreement between Argentina and the United Kingdom has been reported to date.

38. With regard to intra-island transport, the Falkland Islands Development Board has been holding discussions with Island Shipping Ltd for a possible ferry to Falkland Sound. The project cost is estimated at £20,000.[11] Talks are also being held with Island Shipping Ltd for an East-West ferry that would start service in May 2006. The service is aimed at 60 people from the West, representing 27 farms.[12]

G. Banking

39. Both British and local coinage is used, together with local currency notes. There is parity between United Kingdom and Falkland Islands (Malvinas) currency. The Standard Chartered Bank of the United Kingdom operates a branch in Stanley.

H. Public works

40. The Public Works Department of the territorial Government is responsible for road-building projects, municipal services, construction projects and supplying water and electricity to the residents of Stanley.

V. Social conditions

A. General

41. According to the administering Power, the Territory observes the principles contained in the Universal Declaration of Human Rights. The provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms have been extended to the Falkland Islands (Malvinas) by the administering Power. Furthermore, the United Kingdom has extended the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights to the Territory and observes the regular reporting procedures under those instruments. The common law of England applies in the Falkland Islands (Malvinas), except insofar as it is inconsistent with any enactment of the law applying to the Falkland Islands (Malvinas). There is no discrimination on the basis of sex in the implementation of articles 2 and 3 of the International Covenant on Civil and Political Rights. The Convention on the Elimination of All Forms of Discrimination against Women has been applied by the United Kingdom in the Falkland Islands (Malvinas), with the agreement of the territorial Government.

42. According to the Government of Argentina, those declarations by the United Kingdom regarding the Falkland Islands (Malvinas), South Georgia and the South Sandwich Islands were rejected by the Government of Argentina by its declarations of 3 October 1983 and 8 August 1986 on the International Covenant on Economic, Social and Cultural Rights, of 3 October 1983, 8 August 1986 and 5 October 2000 on the International Covenant on Civil and Political Rights, of 4 April 1989 on the Convention on the Elimination of All Forms of Discrimination against Women and of 18 January 2005 on the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women.

B. Public health

43. The general state of health in the Falkland Islands (Malvinas) is good. There is no private system of medical care. Medical and dental treatments and prescription drugs are free to all residents and to United Kingdom citizens under a reciprocal health agreement. All medical services are based at the King Edward VII Memorial Hospital in Stanley, which provides a full range of primary-care services to the civilian population, military personnel stationed in Stanley and foreign fishing fleets around the Islands. In addition, there is a visiting medical service to outlying farm settlements. The Hospital has facilities to deal with acute medical and surgical conditions. It has 28 beds, including two maternity and two intensive care beds. Cases requiring specialist attention are first stabilized and then evacuated to the United Kingdom or Chile, or in emergencies, to Uruguay. According to the administering Power, the estimated expenditure for health and social services in 2004/05 was £6 million, up from £5.5 million in 2002/03.[13]

C. Social security and welfare

44. The Falkland Islands Retirement Pensions Ordinance provides for mandatory fixed monthly contributions by all employers and employees between the ages of 17 and 64. Implementation of the Falkland Islands Pension Scheme Ordinance 1997 commenced during 1998. That scheme provides a national defined contribution vehicle through which employers, self-employed individuals and other individuals within the Falkland Islands (Malvinas) can make contributions under employer-employee agreements or voluntarily during their working lives and receive a pension upon retirement. A system of social welfare grants and pensions is in operation to deal with hardship and disability cases.

D. Education

45. Education in the Falkland Islands (Malvinas) is free and compulsory for all children between the ages of 5 and 16. The local Government provides staff, equipment and supplies for education, has a primary and a secondary school in Stanley and operates four small settlement schools on large farms. In the rural areas, younger children either attend the settlement schools or are visited by one of six travelling teachers for two weeks of every six. There are also radio and telephone lessons available. Students above the age of 16 who qualify in exams are funded for studies in the United Kingdom. According to the administering Power, in 2005,

there were 423 schoolchildren being educated in the Falkland Islands (Malvinas) and 53 being educated in the United Kingdom. The illiteracy rate of the total population aged 20 years and over was estimated to be 0.5 per cent.

VI. Participation in international organizations and arrangements

46. The Government of the Falkland Islands (Malvinas) participates in activities of the Commonwealth and is a member of the United Kingdom Overseas Territories Association. Representatives of the Government have participated, as members of the United Kingdom delegation, in discussions on matters affecting their interests, such as those leading to the Joint Statement of 14 July 1999.

47. In its letter of 14 November 2005 to the Secretary-General, the Government of Argentina rejected the declaration made by the United Kingdom extending the territorial scope of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction to the Falkland Islands (Malvinas).

VII. Consideration by the United Nations

A. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

48. The Special Committee considered the question of the Falkland Islands (Malvinas) at its 8th meeting, on 15 June 2005. At that meeting, the Special Committee decided to accede to the request of Argentina, Brazil, Ecuador, Guatemala, Paraguay, Peru and Uruguay to participate in the consideration of the item. At the same meeting, in accordance with a previous decision taken by the Special Committee at its 5th and 7th meetings, statements were made by Councillors John Birmingham and Stephen C. Luxton of the Legislative Council of the Falkland Islands (Malvinas). James Douglas Lewis and Luis Gustavo Vernet also made statements (see A/AC.109/2005/SR.8).

49. Also at the same meeting, the representative of Chile, on behalf of the Bolivarian Republic of Venezuela, Bolivia and Cuba, introduced a draft resolution on the item (A/AC.109/2005/L.8). The draft resolution reiterated that the way to put an end to the special and particular colonial situation in the question of the Falkland Islands (Malvinas) was the peaceful and negotiated settlement of the dispute over sovereignty between the Governments of Argentina and the United Kingdom. It requested both parties to consolidate the current process of dialogue and cooperation through the resumption of negotiations in order to find a solution, in accordance with the provisions of the relevant General Assembly resolutions.

50. At the same meeting, the Minister for Foreign Affairs, International Trade and Worship of Argentina, Rafael Bielsa, stated, inter alia:

> "The Malvinas Islands question that summons us today, is a special and particular colonial question, as recognized by this Committee. Its special

nature derives from the fact that the United Kingdom occupied the Islands by force in 1833, ousted the Argentine population and authorities established on the islands and did not allow them to return, replacing them with settlers of British origin.

"Then, as now, Argentina did not consent to these acts of force that gave rise to the Malvinas question and began to make repeated claims for their restitution. The mere passage of time does not generate rights either in favour of a colonial Power occupying foreign territories or in favour of its subjects settled down there in the way that I have described, regardless of the name that the colonial Powers may give to those territories.

"The specificity of the Malvinas question is legally and politically enshrined in resolution 2065 (XX), adopted 40 years ago by a large majority of the General Assembly and reiterated in many other resolutions. It defines the question as a sovereignty dispute between the Argentine Republic and the United Kingdom of Great Britain and Northern Ireland over the Malvinas Islands, which must be solved through negotiations between both States, taking into account the provisions and objectives of the United Nations Charter and of resolution 1514 (XV).

"Moreover resolution 2065 (XX) expressly establishes that both parties should give due consideration to the interests of the inhabitants of the Malvinas Islands. This means, among other things, respect for their properties and their culture, that is to say, for their way of life. This excludes from the question the principle of self-determination, which is only applicable to subjugated or dominated peoples and not to the descendants of a population transferred by the occupying Power. This was the view taken by the General Assembly in 1985 when it expressly rejected two amendments proposed by the United Kingdom to include that principle in the draft resolution on the Malvinas question.

...

"However, we recall that the principle of territorial integrity, as established in resolution 1514 (XV), adopted by the General Assembly, is to be applied to this question. In paragraph 6 it states that 'any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations'.

"The recovery of full sovereignty, while respecting the way of life of the inhabitants of the Islands, in accordance with international law, is a principle laid down in the Argentine Constitution.

"In his inaugural address to Congress on 1 March 2005, President Néstor Kirchner stressed the Argentine Government's firm commitment to recover full sovereignty over the Malvinas, South Georgia and the South Sandwich Islands and the surrounding maritime spaces, stating that this permanent position is a State policy and responds to a collective yearning of the people of our nation.

"The international community, together with the General Assembly of the United Nations and this very Committee, have made repeated calls urging

the Argentine Republic and the United Kingdom to resume negotiations on sovereignty without delay. In this regard, I wish to recall the resolutions and statements issued by the Organization of American States, the Ibero-American summits, MERCOSUR and the Third South American Summit in 2004, the Third Summit South American-Arab countries, held in Brasilia on 11 May 2005, and more recently the one adopted by the Rio Group on the occasion of the twelfth Ministerial Meeting of the Rio Group-European Union, held in Luxembourg on 27 May 2005, to mention but a few.

"My Government has explicitly repeated its willingness to negotiate. However, despite these calls from the international community, the United Kingdom refuses to resume bilateral negotiations on sovereignty and delays and hinders the decolonization process to which this Committee is devoted.

"With a view to resuming negotiations on sovereignty with the United Kingdom, the Argentine Government and the Government of the United Kingdom have, since 1989, adopted different ad hoc understandings of a provisional nature under the sovereignty formula on practical questions concerning the geographical area of the dispute. ...

"My Government has applied these understandings, contributing in a spirit of cooperation to create a situation favourable to the bilateral treatment of the sovereignty dispute, in other words, to resume negotiations towards achieving a final, fair and peaceful solution to the dispute. For that reason, these understandings cannot be assumed to be the acceptance of any claimed status quo in the area of dispute, nor can they be a substitute for a definitive solution to the question.

"Despite my Government's willingness, I must once more point out that the United Kingdom continues to carry out unilateral actions which are contrary to the spirit of cooperation expressed in the provisional understandings. They violate General Assembly resolution 31/49, which urges the parties to refrain from introducing unilateral modifications in the situation while the Islands are going through the process of decolonization.

"The Argentine Government has permanently protested and rejected British unilateral actions concerning the territory under dispute. Over this last year they have included seismic prospecting for hydrocarbons, the granting of licences for exploration and exploitation of minerals and activities associated with aeromagnetic prospecting, the continuous sale of fishing licences in the area under dispute, policing of fisheries in the South Atlantic, British reluctance to advance in confidence-building measures in the military sphere and the continued presence of the British military base in the Malvinas Islands with operational capacity beyond the disputed area.

"The Congress of Argentina is deliberating on some legislative measures addressed to minimize the negative effects to the Argentine interests caused by illegal permits to carry out hydrocarbon-related activities in the disputed area, issued by the illegitimate authorities in the Islands.

"Furthermore, we could add to the British unilateral actions the attempts by the United Kingdom to try to assert an international presence for the Malvinas Islands as a separate entity from our country and to grant the so-called "Island Government" a status which it does not have, and the extension

of international conventions to the disputed area. This has occurred, among other things, with the recent inclusion of the Malvinas Islands, South Georgia and the South Sandwich Islands in the text of the Constitutional Treaty of the European Union.

...

"These unilateral actions by the British are manifestly contrary to the provisions of General Assembly resolutions and must cease" (see A/AC.109/2005/SR.8).

51. At the same meeting, the representatives of the Bolivarian Republic of Venezuela, Brazil (on behalf of the Rio Group), Bolivia, China, Cuba, Grenada, Indonesia, Paraguay (on behalf of the MERCOSUR countries and Bolivia, Chile and Peru), Peru, the Russian Federation, Sierra Leone, the Syrian Arab Republic, the United Republic of Tanzania and Uruguay made statements (see A/AC.109/2005/SR.8).

B. Position of the Government of Argentina

52. On 14 September 2005, the President of Argentina addressed the General Assembly. During the course of his statement, he, inter alia, exhorted the United Kingdom to promptly respond to the call of the international community to resume negotiations.

53. The Foreign Minister of Argentina reiterated this position in his address to the General Assembly on 18 September 2005.

C. Position of the administering Power

54. By a letter dated 16 September 2005, addressed to the President of the General Assembly (A/60/361), the Permanent Representative of the United Kingdom stated the position of his Government in reply to the remarks of the President of Argentina in his address to the General Assembly on 14 September 2005:

"The British Government attaches great importance to the principle of self-determination as set out in Article 1.2 of the Charter of the United Nations and article 1 of the International Covenant on Civil and Political Rights. That principle underlies our position on the Falkland Islands.

"The elected representatives of the Falkland Islands once again expressed their own views clearly when they visited the United Nations for this year's debate in the Committee of 24. They asked the Committee to recognize that they, like any other people, were entitled to exercise the right of self-determination. They reiterated that the people of the Falkland Islands did not wish for any change in the status of the Islands.

"There can be no negotiations on the sovereignty of the Falkland Islands unless and until such time as the islanders so wish.

"The United Kingdom has no doubts about its sovereignty over the Falkland Islands."

D. Contributions by other Member States

55. On 11 October 2005, during the debate on decolonization issues in the Fourth Committee of the General Assembly, several representatives referred to the question of the Falkland Islands (Malvinas). The representative of Uruguay, speaking on behalf of the States members and the associated States of the Southern Common Market (MERCOSUR) (Argentina, Bolivia, Brazil, Chile, Paraguay, Peru and Uruguay), expressed hope for the resumption of negotiations between Argentina and the United Kingdom on that issue, which was one of sovereignty over the Islands. It was further noted that although MERCOSUR supported the principle of self-determination, it was not applicable in that case, given that the issue was one of territorial integrity. He also reiterated the terms of the declarations on the question of the Falkland Islands (Malvinas) adopted by the meetings of the Presidents of the MERCOSUR countries and its associated States (Bolivia and Chile) in 1996, in Potrero de los Funes, Argentina, and in 1999, in Asuncion, reaffirming the legitimate rights of Argentina in the sovereignty dispute over the Falkland Islands (Malvinas). The representatives of the Bolivarian Republic of Venezuela, China, Cuba and Indonesia reiterated the support of their Governments for the legitimate right of Argentina in the sovereignty dispute over the Falkland Islands (Malvinas).

56. The representative of the United Kingdom, in exercise of the right of reply, said that his country's position had been set out in detail in document A/60/361 (see para. 54 above).

E. Action taken by the General Assembly

57. By adopting its resolution 58/316, the General Assembly decided that the item entitled "Question of the Falkland Islands (Malvinas)" would remain on the agenda for consideration upon notification by a Member State. As at the date of the issuance of the present report, there had been no such notification by a Member State to the fifty-ninth or sixtieth sessions of the General Assembly.

F. Consideration by other intergovernmental organizations and international forums

58. On 7 June 2005, the General Assembly of the Organization of American States (OAS), adopted a Declaration on the Question of the Malvinas Islands (Falkland Islands) (resolution AG/DEC.44 (XXXV-O/05)), in which, inter alia, it welcomed the reaffirmation of the will of the Argentine Government to continue exploring all possible avenues towards a peaceful settlement of the dispute and its constructive approach towards the inhabitants of the Malvinas Islands (Falkland Islands). It reaffirmed the need for the Government of Argentina and the United Kingdom to begin negotiations on the sovereignty dispute as soon as possible, in order to find a peaceful solution to that protracted controversy. The Assembly of OAS decided to continue to examine the question of the Malvinas Islands (Falkland Islands) at its subsequent sessions, until a definitive settlement has been reached thereon.

59. Speaking before the OAS Assembly, the Minister for Foreign Affairs, International Trade and Worship of Argentina stated:

"The 'question of the Malvinas Islands', which this Organization has declared to be of permanent interest to the hemisphere, needs to be dealt with and discussed until a definitive solution is achieved. The Governments of the Argentine Republic and the United Kingdom must resume negotiations on sovereignty with a view to achieving a peaceful settlement of the dispute.

"In his inaugural address to Congress on March 1, 2005, President Néstor Kirchner reaffirmed once again the willingness of our Government to pursue dialogue and the resumption of negotiations on this issue so as to end the colonial situation that damages the territorial integrity and the national unity of the Argentine Republic. ... "

60. The position of the United Kingdom with regard to the consideration of the question of the Falkland Islands (Malvinas) by OAS was stated in a note verbale dated 4 June 2004 from the Permanent Observer Mission of the United Kingdom to OAS addressed to the Chairman of the Permanent Council of OAS. Referring to the Declaration on the Question of the Falkland Islands (Malvinas) adopted by the General Assembly of OAS, the Permanent Observer stated that:

"The United Kingdom's position was last set out in detail by the United Kingdom's Permanent Representative to the United Nations, Sir Emyr Jones Parry, in a written right of reply dated 30 September 2003 to the statement made by President Néstor Carlos Kirchner of the Argentine Republic in the United Nations General Assembly on 25 September 2003. Our position was also set out in my letter of 12 February 2004 to the Chairman of the Permanent Council in Washington. I am confident that this matter will not inhibit fruitful cooperation on the remaining issues on the agenda of the thirty-fourth regular session of the General Assembly of the Organization of American States.

"The United Kingdom has no doubt about its sovereignty over the Falkland Islands, South Georgia and the South Sandwich Islands and their surrounding maritime areas."

61. On 27 May 2005, the Ministers of the Rio Group, on the occasion of the twelfth Ministerial Meeting of the Rio Group — European Union, held in Luxembourg, issued a statement on the question of the Malvinas Islands. In that statement, they reaffirmed their support for the legitimate rights of Argentina in the sovereignty dispute over the Falkland Islands (Malvinas) with the United Kingdom. They recalled that the Governments of Argentina and the United Kingdom should resume negotiations in order to reach as soon as possible a fair, peaceful and lasting solution to the sovereignty dispute over the Falkland Islands (Malvinas), South Georgia and the South Sandwich Islands and the surrounding maritime areas, in accordance with the relevant resolutions and declarations of the United Nations and the Organization of American States. They also expressed their concern with regard to the inclusion of the Falkland Islands (Malvinas), South Georgia and the South Sandwich Islands in part III, title IV, annex II, of the Treaty establishing a Constitution for Europe.

62. On 16 June 2005, the Second South Summit of the Group of 77, held in Doha, adopted a Declaration which stated, inter alia:

"We reaffirm the need for the Governments of the Argentine Republic and the United Kingdom of Great Britain and Northern Ireland to resume negotiations in accordance with the principles and the objectives of the United Nations Charter and the relevant resolutions of the General Assembly, in order to find, as soon as possible, a peaceful

solution to the sovereignty dispute relating to the 'Question of the Malvinas Islands', which seriously damages the economic capacities of the Argentine Republic. ..."

63. On 15 October 2005, the Heads of State and Government of the Ibero-American countries, assembled in Salamanca, Spain, on the occasion of the Fifteenth Ibero-American Summit, issued a special communiqué on the question of the Malvinas Islands (see A/60/447, enclosure) in which they:

"reaffirm the need for the Governments of the Argentine Republic and the United Kingdom of Great Britain and Northern Ireland to renew negotiations as soon as possible with a view to finding an early resolution to the sovereignty dispute relating to the Malvinas Islands in accordance with the resolutions of the United Nations and the Organization of American States and the purposes and principles of the Charter of the United Nations, including the principle of territorial integrity."

64. Declarations on the question of the Falkland Islands (Malvinas) were also adopted by the Ministerial Council of the Latin American Integration Association at its meeting, held in Montevideo on 12 May 2005, and the Summit of South American-Arab countries, held in Brasilia on 11 May 2005. Those declarations supported the Argentine position regarding the inclusion of the Falkland Islands (Malvinas), South Georgia and the South Sandwich Islands in the Treaty establishing a Constitution for Europe.

Notes

[1] The information contained in the present paper has been derived from information transmitted to the Secretary-General by the Government of the United Kingdom of Great Britain and Northern Ireland under Article 73 *e* of the Charter of the United Nations on 12 January 2006, as well as from official documents of the Government of Argentina.

[2] *MercoPress*, 24 December 2005.

[3] Ibid.

[4] *MercoPress-Falklands Malvinas and South Atlantic News*, 23 February 2005.

[5] Information received from the Government of the United Kingdom of Great Britain and Northern Ireland under Article 73 *e* of the Charter of the United Nations on 12 January 2006.

[6] *MercoPress*, 6 October 2005.

[7] Information received from the Government of the United Kingdom of Great Britain and Northern Ireland under Article 73 *e* of the Charter of the United Nations on 12 January 2006.

[8] *Penguin News*, 2 September 2005.

[9] Argentina press release, 6 December 2005, *Penguin News*, 9 December 2005; *MercoPress*, 7 and 9 December 2005.

[10] *Penguin News*, 21 October 2005.

[11] Ibid., 21 October 2005.

[12] Ibid., 18 November 2005.

[13] Information received from the Government of the United Kingdom of Great Britain and Northern Ireland under Article 73 *e* of the Charter of the United Nations on 12 January 2006.